STATE OF CALIFORNIA
FISH AND GAME COMMISSION
FINAL STATEMENT OF REASONS FOR REGULATORY ACTION

Amend Section 180.2
Title 14, California Code of Regulations
Re: Trap Destruction Devices

I. Date of Initial Statement of Reasons: August 22, 2002

II. Date of Pre-adoption Statement of Reasons: September 30, 2002

III. Date of Final Statement of Reasons: November 4, 2002

IV. Dates and Locations of Scheduled Hearings:

(a) Notice Hearing: Date: August 2, 2002
Location: San Luis Obispo, CA

(b) Discussion Hearing: Date: August 30, 2002
Location: Oakland, CA

(c) Adoption Hearing: Date: October 25, 2002
Location: Crescent City, CA

V. Update:

Existing law (Section 180.2, Title 14, CCR) requires that every trap used to take finfish, mollusks, or crustaceans by California commercial fishermen must contain a Department approved trap destruction device to serve as an escape hole or mechanism should a trap be lost. The section also specifies trap destruction device opening requirements and defines materials approved for use as destruct material attachments.

Trap destruction devices are important to protect marine organisms when a trap is lost. Lost traps may continue to fish until they fall apart. In order to prevent lost traps from continuing to fish indiscriminately, a passive destruct device must be built into each trap. A lost trap is disabled by deterioration of the destruction device.

Commercial fishing traps are lost for a variety of reasons. Trap loss most commonly occurs due to adverse sea conditions, such as strong waves and wind and/or severe storms. Additionally, loss of visible identification of the trap's location contributes to trap loss. Trap buoy lines and floats which identify a trap's location can be cut by vessel propellers of ship traffic traveling through the fishing

grounds, caught in currents, tangled with other fishing equipment or deliberately sabotaged.

The commercial fishery for Dungeness crab occurs in ocean waters of northern and central California. The central California fleet consists of approximately 100 vessels that utilize an area of over 400 square miles from the mouth of the Russian River to the Avila-Morro Bay area. Dungeness crab fishing grounds in northern California extend from Fort Bragg to the Oregon border encompassing an area approximately twice the size of the central California Dungeness crab fishing grounds. The fleet size in northern California averages approximately 330 vessels per season. Washington and Oregon also have large Dungeness crab fisheries. There has always been vessel movement between fishing areas and states. Additionally, the recent trend in this fishery has been to utilize a greater number of traps. The placement of additional traps in ocean waters has raised concerns by Department staff regarding the potential for increased trap loss at sea and the subsequent need for adequate destruct device construction.

The existing regulatory language did not provide for adequate clarity and enforceable trap destruction device designs due to changes in the specific gear types used in some trap fisheries as well as the various methods the industry used to construct the required destruct devices. The proposed regulatory changes address trap destruct device issues for the Dungeness crab, lobster, and spot prawn fisheries. The Department's goal is to protect marine organisms potentially caught in a lost trap while not placing an undue compliance burden on commercial fishermen. The proposed revisions clarify and correct the trap regulations and reflect both Department and industry representative recommendations.

Prior to the start of the 2001-2002 Dungeness crab season, an issue arose regarding the legal definition of a trap destruct device opening. As an operational practice, some northern California Dungeness crab fishermen had been creating a destruct device opening by cutting and removing wire meshes but leaving a "V" or "W" of wire mesh (referred to by the industry as bars) protruding into the required 5-inch diameter opening. Cotton twine was then tied to the points of the protruding Vs or Ws, lacing the opening closed in a manner that replaced the removed wire mesh with the cotton twine. The cotton twine erodes over time and, therefore, serves as the destruct device material should the trap be lost at sea.

A Department review, conducted in 2000, confirmed that the trap destruct device regulations were not being enforced consistently. The Department's review included conferring with both the states of Oregon and Washington regarding their regulations and enforcement policies. Department, industry representatives, and individual fishermen worked together to revise the existing regulatory language for the 2002-2003 season in a manner that would provide for

the protection of marine resources as intended by the original regulation and also address the needs of the fishermen to the extent possible. The proposed regulations are the result of this cooperative approach

As described above, the regulatory intent of the 5-inch destruct device opening is to allow for the escapement of finfish and crustaceans (crabs) and to render a trap inoperable should it become lost at sea. A biological review of historic field studies conducted by the Department and by the State of Oregon indicated that a 5-inch diameter opening is sufficient for the release/escapement of adult Dungeness crab, the largest of the crustacean species targeted by these traps. However, at this point, no studies have been conducted to determine the optimal size of a destruct device opening for the release/escapement of finfish which might enter a trap to feed on bait. Due to existing information regarding the size of fish most commonly reported to be found in Dungeness crab traps, the Department believes that a 5-inch diameter destruct device opening is sufficient for the release/escapement of finfish should the trap be lost at sea.

The Department's originally proposed regulation amendment would have provided for a 5-inch destruct device opening while allowing a single wire mesh ("V") to protrude into the destruct device opening to serve as an anchor point for the destruct attachment material. The Department believed that the proposed language would address concerns regarding commercial Dungeness crab fishery operational practices while meeting the biological needs for an escape device. However, some northern California commercial Dungeness crab fishermen maintain that it is necessary to allow up to three meshes to protrude into the destruct device opening. This alternative would allow for the continuation of the operational practices of some northern California Dungeness crab fishermen who create their destruct device openings by cutting and removing wire meshes but leaving a single wire mesh (a "V") protruding into the opening on one side and up to two individual wire meshes (a "W") protruding into the opening on the other side. It is maintained by these fishermen that this method of destruct device construction is necessary due to the construction style of their traps that utilize a smaller mesh size, which makes the allowance for the protrusion of a single wire insufficient to meet the required 5-inch opening.

To address the concerns of the north-coast commercial Dungeness crab fishermen, representatives from the industry proposed alternative language for the revision of Section 180.2(a), Title 14, CCR. The following language was included as an alternative within the Initial Statement of Reasons for Proposed Regulatory Action:

> ...*except traps used to take Dungeness crabs, which are constructed of wire mesh, may have up to three meshes that protrude into the destruct device opening provided that the points of each of these meshes are separated by at least one side (bar) of*

an adjoining mesh that has been removed and each of the meshes extend into the opening a distance of not more than 2 ½ inches, as measured from the perimeter of the opening along either edge of the protruding wire mesh, and serve as an anchor for the destruct attachment material. On Dungeness crab traps constructed of wire mesh, the panel containing the destruct device and the wire mesh acting as an anchor for the destruct material must be constructed of a single wire no greater than .050 inches in diameter...

At the adoption hearing, the Commission approved the alternative language proposed by the industry but established a sunset date of July 15, 2003, at which point the allowance of more than a single mesh protrude into the destruct device opening will expire. At the adoption hearing, the Commission also directed the Department to conduct a biological study to examine the effect of the protruding meshes within the destruct device opening. Pending the outcome of this study, the Commission will make a final determination regarding the permanent adoption of regulatory language which would allow up to three meshes, rather than a single mesh, to protrude into the destruct device opening.

Due to the revisions to the regulations associated with the Commission's decision to include the industry's proposed alternative regulatory language, as well as a sunset date, the format of the regulatory language has been revised for the Final Statement of Reasons for Regulatory Action.

The additional proposed revisions of Sections 180.2, Title 14, CCR, contained in the Initial Statement of Reasons for Proposed Regulatory Action were adopted by the Commission. These additional revisions include: (1) a clarification that the cotton twine used as a destruct attachment material be untreated; (2) a clarification that the cotton twine used as a destruct attachment material be single stranded; (3) a clarification that the cotton twine used as a destruct attachment material for trap lid closure destruct mechanisms consist of a single loop; (4) the removal of the reference to one-quarter (.25) inch soft steel rods used on lobster traps with the required use 14 gauge (.080 + or - .003 inch) or smaller metal hog rings; (5) minor revisions referencing the size of hog ring and metal clip gauges, and the type of metal that can be used for destruct device attachment material; and (6) other minor revisions for clarity purposes.

VI. Summary of Primary Considerations Raised in Support of or Opposition to the Proposed Actions and Reasons for Rejecting those Considerations:

Responses to public comments received prior to the Commission's adoption hearing were included in the Pre-adoption Statement of Reasons.

Additional public comments were received at the Commission's adoption hearing held in Crescent City on August 25, 2002. The following is a summary of these

additional public comments and the Department's responses:

(1) Mr. Pete Leipzig, Mr. Zeke Grader, Mr. John Brunsing, and Mr. Wally Jenkins made statements expressing support for the alternative regulatory revision language proposed by the industry which would allow for up to three wire meshes to protrude into the destruct devise opening on wire Dungeness crab traps rather than the Department's proposed single wire allowance.

The proposed alternative revision language was contained and reviewed in the Initial Statement of Reasons for Proposed Regulatory Action as Alternative (A) Industry Proposed Alternative. This alternative was adopted by the Commission at the October 25, 2002 adoption hearing. However, a sunset date of July 15, 2003, was also adopted by the Commission. Effective July 16, 2003, the regulations will revert to an allowance for the protrusion of only a single wire mesh into the destruct devise opening on wire Dungeness crab traps. Following the 2002-2003 Dungeness crab season, the Department will review the available biological information regarding the protrusion of wire meshes into the destruct device opening during and make further recommendations to the Commission regarding the permanent adoption of a multiple mesh provision.

(2) Mr. Joe Wallis made statements at the October 25, 2002 adoption hearing expressing concern that the revision of the regulatory language would contain a clarification that the destruct device opening is to be unobstructed. He also stated that he felt the Department's oral testimony before the Commission referring to a 20 percent loss of Dungeness crab traps by the industry per season was too high.

The Department's proposed revision of the regulatory language clarifying that the destruct device opening is to be unobstructed refers only traps Dungeness crab traps made of wire mesh. The materials used in traps other than wire mesh Dungeness crab traps are stiff and pose an escape barrier if the destruct device opening is not unobstructed. However, the Department's proposed revisions to the trap regulations as well as the Commission's adoption of industry proposed alternative regulatory revisions allow for up to three wire meshes to protrude into the destruct device opening to serve as anchor points for the destruct device material on all wire mesh Dungeness crab traps.

In regards to Mr. Wallis' comments pertaining to the Department's citing of a 20 percent annual estimated loss at sea of Dungeness crap trap by the industry, this figure was provided to the Department by the industry and serves as a rough estimate of the annual trap loss. No studies were conducted by the Department to verify the actual number of traps lost each year.

Additional public comments were submitted in writing to the Commission. The following is a summary of these written public comments and the Department's

responses:

(1) Mr. George Boos submitted a letter, dated October 7, 2002, expressing support for the alternative regulatory revision language proposed by the industry which would allow for up to three wire meshes to protrude into the destruct devise opening on wire Dungeness crab traps rather than the Department's proposed single wire allowance.

The proposed alternative revision language was contained and reviewed in the Initial Statement of Reason for Proposed Regulatory Action as Alternative (A) Industry Proposed Alternative. This alternative was adopted by the Commission at the October 25, 2002.

(2) Mr. Nick Furman, Executive Director of the Oregon Dungeness Crab Commission submitted a letter, dated October 24, 2002, expressing concern regarding the proposed changes to the trap regulations and support for the alternative regulatory revision language proposed by the industry.

The proposed alternative revision language was contained and reviewed in the Initial Statement of Reason for Proposed Regulatory Action as Alternative (A) Industry Proposed Alternative. This alternative was adopted by the Commission at the October 25, 2002.

VII. Location and Index of Rulemaking File:

A rulemaking file with attached file index is maintained at:
California Fish and Game Commission
1416 Ninth Street
Sacramento, California 95814

VIII. Location of Department files:

Department of Fish and Game
1416 Ninth Street
Sacramento, California 95814

IX. Description of Reasonable Alternatives to Regulatory Action:

(a) Alternatives to Regulation Change:

Dungeness trap language that would allow for the measurement of a 5-inch diameter escape opening with a weighted gauge was considered, as was a measuring device that was propelled with "thumb pressure". Both methods allowed for an anchoring mesh or meshes to be moved aside by the gauge when determining the escape opening. From an enforcement viewpoint, thumb

pressure is imprecise and subjective, which makes such a regulation difficult to enforce. Further, the creation of a weighted gauge for warden use in determining the ability of a mesh to bend under a set amount of pressure, as well as the likelihood of an inability to consistently apply such a device under field conditions renders this alternative infeasible. A program to educate trap fishermen about destruct materials and devices was also considered. This alternative was rejected due to the lack of Department staff and funding to support such an effort. Additionally, given the diversity of traps utilized in the State, the different seasons and target species involved, and the uncertainty of voluntary compliance, the success of such a program would not be guaranteed.

(b) No Change Alternative:

The trap destruction device section as written would continue to function, but with decreasing effectiveness. Loopholes in the regulations provide increasing opportunities for trap fishermen to create trap destruction devices that, while legal according to the regulatory language, defeat the intent of the regulation. The subsequent effect would be the deployment of traps with destruct attachment materials that do not allow for proper operation of the device should the trap be lost at sea. With the number of traps being deployed by spiny lobster, rock crab, Dungeness crab, and spot prawn fishermen increasing, California needs to have an enforceable, unambiguous set of destruct device regulations that are appropriate for maximizing protection of marine resources with the current trap technology in use.

The intent of an escape opening is that it allows for not only the targeted species to escape, but also the release/escapement of all other fish and invertebrates that might swim into the trap should the trap become lost at sea. If the current regulatory language is not clarified, the Department's wardens will enforce a completely unobstructed 5-inch diameter escape opening, pursuant to a previous Department Division of Legal Affairs review. Enforcement of an unobstructed 5-inch diameter destruct device opening would not allowance for Dungeness crab traps to have a mesh protruding into that the destruct device opening. An unknown number of Dungeness crab fishermen would have to modify the destruct openings on their existing wire mesh traps before the start of the season on November 15, 2002 in central California and December 1, 2002 in northern California.

(c) Consideration of Alternatives:

In view of information currently possessed, no reasonable alternative considered would be more effective in carrying out the purposes for which the regulation is proposed or would be as effective as and less burdensome to the affected private persons than the proposed regulation.

VI. Impact of Regulatory Action:

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following initial determinations relative to the required statutory categories have been made:

(a) Significant Statewide Adverse Economic Impact Directly Affecting Businesses, Including the Ability of California Businesses to Compete with Businesses in Other States.

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The proposed revision clarifies the original intent of the regulation regarding the requirement for all traps used for the commercial take of crab, lobster and spot prawn to contain a destruct device. The required destruct device disables a trap should it become lost at sea. Under normal circumstances a trap lost at sea is not retrievable. The economic impact to the industry and/or the individual fisherman is associated with the loss of the trap and not in compliance with the regulation. The proposed language specifies acceptable destruct device designs and materials, but does not change existing regulatory requirement for a destruct device. Compliance with the proposed regulation will alter existing operational practices for a small portion of the commercial trap fishermen and, therefore, does not pose a significant statewide adverse economic impact for the industry or associated businesses.

(b) Impact on the Creation or Elimination of Jobs Within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California: None

(c) Cost Impacts on a Representative Private Person or Business:

The Commission is aware that a representative private person or business could incur approximately $140 in annual cost impacts in reasonable compliance with the proposed action.

(d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None

(e) Other Nondiscretionary Costs/Savings to Local Agencies: None

(f) Programs Mandated on Local Agencies or School Districts: None

(g) Costs Imposed on Any Local Agency or School District that is Required To be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4: None

(h) Effect on Housing Costs: None

Updated Informative Digest/Policy Statement Overview

Currently, all traps deployed by commercial fishermen licensed in the state of California must contain a trap destruction device. The devices approved for use by the Department are specified in Section 180.2, Title 14 CCR.

The California Department of Fish and Game is proposing:

- the clarification that Section 180.2, Title 14 CCR applies to all traps placed in ocean waters off the coast of California;
- the addition of language to stipulate that it is illegal to cause or otherwise defeat the intent of a trap destruct device;
- the addition of clarifying language that specifies that the escape opening of 5 inches in diameter is unobstructed;
- the elimination of a soft steel rod not greater than one quarter (.25) inch in diameter from the approved list of devices, and the addition of 14 gauge (.080, + or - .003 inch or smaller) metal hog rings not made of stainless steel or other non-corrosive material as an approved destruction device;
- the addition of clarifying language that specifies a single strand of untreated cotton twine size No. 120 or less in Dungeness crab traps, and untreated cotton twine size No. 21-thread of less in other traps;
- the addition of clarifying language that specifies that 24 gauge bare metal crimps shall be .028 + or - .003 inch or smaller; and
- the addition of clarifying language specifying that a single loop of untreated cotton twine size No. 120 or less may be used as destruct device material for attaching rubber door closing straps to metal or plastic clips.

The Commission adopted the following additional changes to Section 180.2, Title 14 CCR at its adoption hearing held on October 25, 2002:

- the addition of clarifying language concerning the destruct device in wire mesh Dungeness crab traps to allow for the protrusion of up to three wire meshes into the escape opening to serve as an anchors for the destruct device attachment material;
- the establishment of a sunset date of July 15, 2003, at which point the allowance of more than a single mesh protrude into the destruct device opening will expire.
- a directive for the Department to conduct a biological study to examine the effect of the protruding meshes within the destruct device opening. Pending the outcome of this study, the Commission will make a final determination regarding the permanent adoption of regulatory language which would allow up to three meshes, rather than a single mesh, to protrude into the destruct device opening.